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## PUBLIC LIABILITY AND THE PROFESSIONAL

Most professionals with USDA employment history have been cautioned about the possibility of being personally sued for money damages by the people we serve. Most of us have said, "It won't happen to me!" In all likelihood it won't! But, in this age of litigation, we should realize what our risks are and what steps we can take to reduce them.

Our story begins in 1971 when the Supreme Court held that the alleged violation of the Fourth Amendment to the Constitution (protection against unreasonable searches and seizures) could serve as the basis for a suit for money damages against Federal officials. The case was *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971) and dealt with the constitutional violations alleged to have incurred during a narcotics raid. In this case, the courts said that the Federal employees were no longer entitled to absolute immunity. They were entitled to only qualified immunity. This means that the defendant regardless of the belief he or she acted in good faith must prove in a very objective manner that there was no violation of "clearly established" constitutional guarantees.

From 1971 to date the situation has become more complicated and more serious. This is the day and age of lawsuits and almost any violation, in or out of government, can lead to one.

How serious is the problem? Since 1971, things have happened. Over 10,000 suits have been filed; 2,300 suits were pending in Federal courts by 1983; about 10,000 Federal employees were defendants in those cases pending; and new suits are being filed at the rate of about 50 a month.

By the early 80s it was estimated by the Office of Personnel Management that as many as one in every 300 Federal employees had become involved in a Constitutional tort lawsuit.

The best news is that in very few of the cases has a judgement been entered against a Federal employee; in fact, most cases are dismissed without a trial. Another bit of progress is that in June of 1982, the Supreme Court made it easier to dismiss insubstantial suits before they absorbed a large amount of time and money. This was followed in June of 1983 with a Court decision that barred all suits by Federal employees against one another arising out of personnel actions.

While this has helped reduce the burden of liability carried by Federal employees and has helped to diminish the fear of carrying out assigned duties, the problem remaining is still substantial and threatening. The name of the game is litigation.

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### OPEDA's COUNCIL

OPEDA is continuing to seek ways to better serve members. A key group in this search is the National Council. This group of 28 individuals have each been elected by the members in each of the 28 regions. Council Members are elected for three-year terms and are limited to two terms. Each of these elected Council Members wear two hats: first, as OPEDA's representative in the Region, and secondly, as a member of the Council.

As OPEDA's "Representative," he or she serves both the members and OPEDA's National leadership. This is done by bringing member concerns to the attention of the Board and Council, and, in turn, conveying to the members and chapters OPEDA's services, programs, and policies.

As a member of OPEDA's Council, he or she works to establish policies and programs consistent with the purposes and objectives of OPEDA. In short, the Council sets the long range program for OPEDA and then monitors the work to determine if changes are needed or if the progress is meeting the set goals.



Region 1, Alaska, Idaho, Washington - **Creighton Gilbert** retired in 1981 after 30 years with SCS, ending his career as Assistant State Conservationist in Boise, Idaho. He received his B.S. degree in Ag Engineering from OR St. Univ. and his master's degree in Public Admin. from Harvard's John F. Kennedy School of Government. He and his wife presently reside in Boise where he continues to be active in SCSA and American Society of Agricultural Engineers. He has held several positions in the Southern Idaho Chapter and has been an OPEDA member since 1968.



Region 2, Oregon - **Jean Gronnert** retired in 1982 from Soil Conservation Service Technical Service Center in Portland, Oregon. She now owns and operates her own business, as well as being active in several organizations. She is on the Leg. Com. for the Portland Club of Business & Professional Women and is editor of NARFE Chapter 29 newsletter. She has been active in OPEDA since becoming a member in 1962, having served the Columbia River Chapter as President, Vice President, and Secretary-Treasurer. She is now serving her last term as Council Rep which expires in June.



Region 3, No. California, Nevada - **Richard Edwards** joined Agricultural Research Service Western Regional Research Center as a research engineer in 1972 and is now research engineer, Processing and Conversion Research Unit, WRRRC. He received B.S. and M.S. degrees in Engineering from Alfred University, and the U of California at Berkeley, respectively, and an M.S. degree in Food Science from the U of Calif. at Davis. He has been active in the WRRRC Chapter of OPEDA for the past 16 years having served as President, Membership Chairman and National Affairs Chairman. He is now serving his last term as Council Rep which expires in June.





Region 4, So. California, Hawaii, Guam - **Donald Redmond** retired after 31 years with the Forest Service where he served as a Realty Specialist. Most of this time was spent in the Fresno area. He received his B.S. in Forestry from Syracuse U in NY state. He has been active in community affairs and until retirement served as a member of the Fresno City Police Reserve. He is a member of the Sierra Club and the International Right of Way Association. He has been an OPEDA member since 1968, and has been active in the Sierra-San Joaquin Chapter.



Region 5, Arizona, New Mexico - **Marshall Levin** retired in late 1986 as Director of the Carl Hayden Bee Research Center, ARS, Tucson, AZ. He joined ARS in 1950 as research entomologist, conducting research on the role of honey bees as pollinators of agricultural crops. He received his B.S. degree from the University of Connecticut, and his M.S. and Ph.D. from University of Minnesota. He has served in Logan, Utah, and had administrative assignments in Beltsville, MD, and in Washington, D.C. He has been a member of OPEDA since 1974.



Region 6, Colorado, Utah, Wyoming - **Gerald Schuman** is the Research Leader for the USDA High Plains Research Station at Cheyenne, WY. He joined ARS twenty years ago as a Research Soil Scientist serving in Nevada, Nebraska, and since 1975 in Wyoming. He received his B.S. degree in Soils from the University of Wyoming, and Masters from University of Nevada at Reno, and his Ph.D. in Agronomy from University of Nebraska. He has been active in OPEDA's legislative network, and has been a member of OPEDA since 1981.



Region 7, Montana, North and South Dakota - **Odell Ottmar** is the Chief of Reservation Programs for FmHA in Bismarck, ND. He received his B.S. degree in Animal Husbandry from North Dakota State Univ. in 1964. Shortly after he was employed by FmHA and has served continuously with that agency. He has been active in professional and community organizations. He is a member of NARFE and is a Director for the ND Chapter of Farm Managers and Appraisers. He joined OPEDA in 1973 and has taken an active role in chapter activities.



Region 8, Nebraska, North Dakota - **Elmer Elmshaeuser** retired in 1980 after 20 years of service with the Farmers Home Administration. He received his B.S. degree from Colorado State University at Fort Collins in 1949. After teaching Vocational Agriculture for about 14 years he began work with FmHA in 1963. He has been an OPEDA member since 1967 and has served as President, Vice President and Membership Chairman in the Nebraska Chapter. He was also a Council Member in the 70s.



Region 9, Kansas, Oklahoma - **Loren Pearson** is a Range Conservationist with SCS, serving the Northwest corner of Kansas. He received his B.S. in Botany/Agriculture from Ft. Hays State University, Hays, KS. He entered Federal service in 1957 with SCS and has held various positions with that agency. He is an active member of the KS Assoc. of Conservation Districts, Nat. Assoc. of Con. Districts, SCSA, and Soc. for Range Mgmt. He has been a member of OPEDA since 1975. He was the first President of the newly organized Sunflower (KS) Chapter which he helped form.



Region 10, Texas - **M. David Humphrey** retired in 1986 as a Mathematical Statistician in the Texas Crop and Livestock Reporting Service. He was with SRS for more than 30 years, working in OR, NM, NC, MO & D.C. He is a graduate of Texas A&M with B.S. and M.S. degrees. He has actively supported professionalism and has submitted applications for three Profes.-of-the-Year Awards with one recognized nationally and two regionally. He joined OPEDA in 1955. He has supported chapter formations in Texas and been an active recruiter. He received OPEDA's National Honor Award in 1986.



Region 11, Arkansas, Louisiana - **Paul Whittington** is an Area Conservationist with SCS at Ft. Smith, AR. He began his career with the Army serving in Korea, then received a B.S. degree in Agriculture from the Univ. of Arkansas at Fayetteville. After graduation, he became a Vo-Ag teacher staying with that profession for seven years at which time he joined SCS in 1962. He has been a member of OPEDA since 1962 and has been active in recruiting in Arkansas. He has a strong interest in employee concerns and is a strong supporter of professional programs.



Region 12, Missouri - **Connie Shay** is Administrative Asst. in Columbia, MO, serving the Federal Crop Insurance Corp. Her experience includes service with three agencies in USDA. She started her career in 1970 in FMHA as a County Office Clerk in Fayette and after serving in other Cen. MO locations transferred to Columbia. In 1978 she joined the state ASCS office. In 1982 she assumed her present duties. She has been an active member of OPEDA since joining in 1977 and has served as President of the Central Missouri Chapter since 1980. This Chapter received a National Chapter Membership Award in 1981 for membership development.



Region 13, Minnesota, Wisconsin - **Irving Sachs** has been a research forest products technologist for Forest Service at the Forest Products Lab in Madison, WI since 1958. Honored nationally and internationally for his work on electron microscopic techniques and other research in wood and wood products. Holds B.S., M.S. & Ph.D. degrees from University of Illinois. Has been a member of OPEDA since 1967, and won its Professional-of-the-Year Award in 1981. He is now serving his last term as Council Rep which expires in June.





Region 14, Illinois, Indiana - **Mitchell G. Hassler** retired as State Forester for SCS with headquarters at Indianapolis. He and his associates in OPEDA set tremendous records in recruiting new members in the Hoosier Chapter. He has a B.S. degree in Forestry from Purdue University, and started his government career in 1952. As a District Conservationist he started the first Resource Conservation and Development Project at Lincoln Hills, which became a "show place" for officials who want to start similar projects. He has been a member of OPEDA since 1972, serving as Chapter President and Vice President.



Region 15, Kentucky, Tennessee - **Sharon Yocum** is an Assistant County Supervisor for the Farmers Home Administration County Office at LaGrange, Kentucky. She started with FmHA in May 1965 as a County Office Assistant in Indiana. She was promoted to her present position in 1979. She has been a member of OPEDA since 1977. She was active in the Hoosier Chapter of OPEDA, and attended the National Council meeting in 1978 from that Chapter. She has been a strong supporter of professionalism and has been an active recruiter in Kentucky and Tennessee.



Region 16, Alabama, Mississippi - **Richard Keith** is a SCS Project Engineer for Watershed and RC&D projects in AL. He started his career in 1959 with SCS in TN and held positions in various locations in several states. He has a B.S. in Agricultural Engineering from Univ. of Tennessee, Knoxville, TN. He is a member of SCSA, Nat. Assoc. of Conservation Districts and Am. Soc. of Ag. Engineers. He is on the Board of Directors of the Dale County Rescue Mission and very active in the Ozark Baptist Church. He joined OPEDA in 1979 and has been President of the Southeast Alabama Chapter for many years.



Region 17, Florida, Puerto Rico - **Betty Jo Holland** is an Administrative Officer for the Farmers Home Administration in Gainesville, Florida. She began her career with Agricultural Stabilization and Conservation Service and transferred to FmHA in 1964. She served as a Classification Specialist and Staffing Specialist at the FmHA National Office before returning to her former position as Administrative Officer in 1980. She is an active member of OPEDA and took part in the establishment of the first OPEDA chapter in Florida in 1967.



Region 18, Georgia - **Robert C. Robison** is the State Conservation Engineer with SCS headquartered in Athens, GA. He joined SCS in 1949 after graduating from Ohio State University with a degree in Agricultural Engineering. He assumed his present position in 1966 after service in Ohio. He has been a member of OPEDA since 1963 and been active in chapters in both Ohio and Georgia, serving on various committees and as Chapter President. He was the winner of the 1986 OPEDA Professional-of-the-Year Award and is a strong supporter of professionalism in government service.



Region 19, North Carolina, South Carolina - Talmadge Wiggins is an Area Conservationist with SCS at Wilkesboro, N.C. In his 30 years service, he has held several positions, including District Conservationist and RC&D Coordinator. He received his B.S. degree in Animal Sciences from N.C. State University. He is active in professional affairs, and is a long time working member of SCSA, and a member of the N.C. Land Use Congress. He has received two Certificates of Merit from SCS. He has been a member of OPEDA since 1959, and is the President of the North Carolina Chapter.



Region 20, Virginia, West Virginia - Homer (Red) Rowley is Assistant Statistician in charge of the Virginia State Office of the National Agricultural Statistics Service. He earned his degree in Ag. Economics at Washington State U. in 1965. His first assignment with NAAS (formerly SRS) was in the Washington State Office, followed by tours in California, D.C. and then to his present assignment in Richmond. He has been a member of OPEDA since 1970 and has been active in the Richmond Chapter serving as Vice President and President.



Region 21, Michigan, Ohio - David Berna has been a Forester with SCS in Columbus, Ohio, since 1977. From 1966-77 with SCS as District Conservationist in IN; from 1962-66 Forester with Forest Service, Gunnison National Forest in CO. Received B.S. degree in Forestry from Purdue Univ. in 1962. Is member of SCSA, and Society of Am. Foresters. Joined OPEDA in 1971. Held President and other officer positions in both Buckeye and Hoosier Chapters. He was a special representative to the 1983 National Council Meeting on how membership recruiting can be successful in chapters.



Region 22, New York, New England - Ronald Fletcher is a Coordinator for the South Central Resource Conservation and Development Project headquartered with the Soil Conservation Service at Binghamton, New York. He began his SCS career in 1967 in West Virginia, transferring to New York state in 1971. He has served in a number of locations as District Conservationist before assuming his present position. He has been a member of OPEDA since 1972 and has been active in various OPEDA activities.



Region 23, Pennsylvania, New Jersey - Walter Fiddler is a research leader in the Food Safety Lab, Eastern Regional Research Center, ARS, Philadelphia, Pa. He earned his B.A. in Chemistry and Ph.D. in Organic Chemistry at Temple University, and joined ARS in 1965, the year he received his Ph.D. He is active in several professional societies, including Am. Chemical Society, Inst. of Food Technologists, and Am. Assoc. for the Advancement of Science. He has been active in the ERRC Chapter and an OPEDA member since 1979. He received the Region 23 Professional-of-the-Year Award in 1985. His first term as Council Rep expires in June.





Region 24, Maryland, Delaware - James Hilton is presently Chairman of the Agricultural Environmental Quality Institute of the Agricultural Research Center, ARS, Beltsville, MD. He received his AB Degree from Duke Univ. in 1952 and his Ph.D. in Plant Physiology from Iowa St. Univ. in 1955. He has served as Editor-in-Chief of the Weed Science Soc. of America since 1978. He has received many awards from professional organizations and numerous certificates of merit from ARS. He joined OPEDA in 1977 and served as President and Vice President of the Beltsville Chapter.



Region 25, Secretary's Staff, International and Commodity Agencies - Dale Wilson is an Agricultural Program Specialist with the Agricultural Stabilization and Conservation Ser. in DC. He received his B.S. degree in Agriculture and his M.S. degree in Agricultural Economics from the University of Missouri, Columbia, Missouri. He did additional graduate work at Michigan State University, East Lansing, Michigan. He joined OPEDA in 1983 and has been supportive of many activities of the D. C. Interagency Chapter over the last few years.



Region 26, Economics, Extension, Research and Statistics - Charles McDougall retired from USDA in 1981 after 34 years of Extension Service employment in NJ and D.C. He held positions of Field Representative, Asst. Administrator for University Relations, and Deputy Administrator for Operations in the Extension Service in DC. He has a B.S. in Agriculture from Rutgers Univ., M.S. in Educational Admin. from Columbia Univ., and did graduate study at the Univ. of AR, and the Fed. Executive Inst. He has been a member of OPEDA since 1968 and a great supporter of professionalism.



Region 27, Food, Consumer, Marketing & Inspection Services - William (Dick) Seymour is Program Leader, Feasibility and Development Group, Coop. Dev. Div. in Agricultural Cooperative Service in D.C. In 1959 after several years as a Manager for the Southern States Coop. in WV, he joined ARS. In 1963 he transferred to FCS. He has since served with Rural Dev. Service and FmHA. He received both his B.S. in Animal Husbandry and M.S. in Livestock Marketing from the University of West Va. He is Mayor of Bladensburg. He has been a member of OPEDA since 1960 and has served on the Board as Vice President for Economics.



Region 28, Natural Resources & Rural Development - J.L. (Les) Whitmore is on the International Forestry Staff, Forest Service in D.C. as liaison to International Organizations. He is also Research Program Coordinator for the "Man and Biosphere Program." He received a B.S. degree in Forestry and a Master of Forestry degree from the Univ. of Michigan. He has been with FS since 1969 primarily as Tropical Research Forester in Latin America and has served in NH, AZ, and PA. He has been an OPEDA member since 1978 and most recently served as Vice President of the newly formed NRRD Chapter.

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The question is, "What can be done to reduce the likelihood of being a victim of a suit?" There are two things that can be done to reduce the risk. The first is to support OPEDA's legislative activity and second is for the employee to make some special efforts. All this assumes that the employee recognizes the importance of acting within the scope of his or her assigned duties.

Legislation: Over the past years, OPEDA has worked to reinstate some degree of protection for Federal employees. Since 1971, a number of bills have been introduced to amend the Federal Tort Claims Act. None has made it into law. Among the reasons for the delay is that no one can agree on what can be done to protect the Federal employee from lawsuits and still permit that employee to be punished for misconduct. Until such agreement can be reached or some new solution appears, legislation will be on hold.

Personal measures: There are several things an employee can do to reduce the risk of economic loss due to a lawsuit.

Insurance (Automobile): The largest percentage of these claims deal with vehicle misuse--so check out your personal automobile insurance policy and determine (1) how well you are protected while driving your car, a rental car, or a government owned vehicle while carrying out your assigned duties; and (2) how extensive is the public liability protection in your policy.

Insurance (Homeowners): For those covered by homeowner's insurance, there is a slight (very slight) possibility that some protection is provided. A check with your agent will very likely eliminate this possibility as a source of protection, and will further enlighten you as you research the problem you face.

Insurance (Professional Liability): This coverage is tailored for the situation and will provide the degree of protection you need. Unfortunately this liability insurance, along with other types of liability protection in the United States, is becoming more and more expensive. It may be worthy of consideration if you are in a position where your work causes you to deal directly with the public and you provide a personal type service. Your inquiry into the availability of this professional liability insurance might best start with your insurance agent.

On the Job: There is no way to anticipate the probability of a suit. The best protection is a professional approach to your work, and always remember the bottom line is act within the scope of the authority of your assignment. If for some reason you are suspicious of a particular situation, it would be an exercise in good judgement to record the circumstances so in the event of litigation your memory could be refreshed.

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## OPEDA'S CODE OF ETHICS

### TO THE AMERICAN PEOPLE:

Courteous, efficient, and impartial service.

### TO OUR GOVERNMENT:

Loyalty, faith, and full measure of devoted service.

### TO OUR ASSOCIATES:

Courtesy, fairness, freedom of expression, moral support, opportunity, and recognition.